

## **REMARKS**

### **Overview**

The present application includes claims 1-38. With this Amendment, Applicant has amended claims 21 and 36 as indicated in the Listing of Claims. As such, claims 1-38 remain pending in this application.

### **Telephonic Interview**

Applicant thanks the Examiner for the courtesies extended during the 01 December 2004 telephonic interview.

As to the rejections under 35 USC § 101, the Examiner suggested adding words of technology in the preamble and body of such claims, e.g. “an electronic communications system.”

As to the rejections under 35 USC § 103(a), Applicant pointed out that the prior art applied by the Examiner only included a generic portion as opposed to an audio message including both a generic portion and a tailored portion as recited in the claims of the present application.

### **Drawings**

Applicant acknowledges that the drawings are considered informal, but acceptable for examination purposes.

### **Claim Rejections under 35 U.S.C. §101**

The Examiner rejected claims 21, 24, and 36-38 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The rejected claims include independent claims 21 and 36 from which the remainder of the claims depend.

Applicant has amended the preamble and body of both independent claims 21 and 36 to include the words of technology suggested by the Examiner, namely “electronic communications system.” In view of the amendments to claims 21 and 36, Applicant respectfully requests that the rejection under 35 U.S.C. § 101 be removed.

### **Claim Rejections under 35 U.S.C. §103**

The Examiner rejected claims 1-38 under 35 U.S.C. §103 as being unpatentable over US Patent No. 5,848,397 to Marsh et al (“Marsh”). The rejected claims include independent claims 1, 12, 21, 27, 32, and 36 from which the remainder of the claims depend.

Marsh is directed to a METHOD AND APPARATUS FOR SCHEDULING THE PRESENTATION OF MESSAGES TO COMPUTER USERS. Marsh discloses a method and apparatus for scheduling the presentation of a continuously-changing display to computer users, and is particularly well suited for use in an advertisement-supported e-mail service. Referring to Fig. 1, an exemplary e-mail system 100 includes a client system 101 and a server system 104 which communicate with one another over a network 103. Referring to Fig. 4, the advertisements include banner ads 601 and showcase ads 1001.

It appears that the system of Marsh does select the advertisements to present to a user based on demographic information about the user and that the advertisements may include sound (see for example Marsh, col. 15, lines 20-53). However, the advertisements presented by Marsh appear to be the same regardless of who receives the advertisement. As such, there is no tailoring of the advertisement itself, but simply a process for selecting who receives the advertisement. Thus, the system of Marsh simply selects from a set of generic advertisements and sends one of the generic advertisements to the selected user. The Marsh system does not appear to tailor the message itself.

In contrast, as recited in claim 1 “present the targeted individual with a resource including an audio component . . . , the audio component including at least one generic portion and at least one tailored portion, . . . (emphasis added)“ Similar limitations relating to an audio component included both a generic portion and a tailored portion are recited in the remaining independent claims 12, 21, 27, 32, and 36. For one example shown in the present application and not for limitation, Applicant refers Examiner to Fig. 12 which shows a message 430 that includes generic portions 432, 434, 436, 438 and 440, as well as tailored portions 442, 444, 446, 448, 450, 452.

Applicant submits that Marsh does not disclose, teach or suggest the marketing system for communicating with an audience including a targeted individual through a communication system as recited in claim 1 comprising, among other things, “a processor; a database accessible by the processor and including data related to the targeted individual and an identifier; . . . the processor adapted to present the targeted individual with a resource including an audio component in response to the presentment of the identifier . . . the audio component including at least one generic portion and at least one tailored portion, . . .

configured to present the audience with a recording containing marketing information and the at least one tailored portion including at least one audio recording ... configured based on at least a portion of the data in the database related to the targeted individual.” Unlike the system in Marsh wherein everyone who receives an advertisement receives one of a set of general advertisement, the system of claim 1 provides a tailored advertisement to each targeted individual, the tailored advertisement including at least one tailored audio component. The tailoring of the advertisement provides the more effective marketing than simply sending the same advertisement to a selected group of people.

As one example shown in the present application and not in any way to be construed as a limitation of the claims, Applicant refers Examiner to Fig. 12 which shows a message 430 that includes generic portions 432, 434, 436, 438 and 440, as well as tailored portions 442, 444, 446, 448, 450, 452.

For at least these reasons, Applicant submits that the marketing system as recited in independent claim 1 is patentable over Marsh. Further, Applicant submits that claims 2-11 which depend from claim 1 are in condition for allowance at least for the reasons given above in connection with claim 1 and for the further limitations of claims 2-11.

Applicant submits that Marsh does not disclose, teach or suggest the marketing system for communicating with a targeted individual as recited in claim 12 comprising, “the processor adapted to selectively present the targeted individual with a second media ... including an audio message having at least one generic portion and at least one tailored portion, the at least one tailored portion configured based on at least a second portion of the data in the database related to the targeted individual.” Similar to claim 1, the system of claim 12 provides a tailored advertisement to each targeted individual, the tailored advertisement including at least one tailored audio component.

For at least these reasons, Applicant submits that the marketing system as recited in independent claim 12 is patentable over Marsh. Further, Applicant submits that claims 13-20 which depend from claim 12 are in condition for allowance at least for the reasons given above in connection with claim 12 and for the further limitations of claims 13-20.

Applicant submits that Marsh does not disclose, teach or suggest the method for marketing to a targeted individual as recited in claim 21 comprising the step of, “providing the targeted individual with a second media in response to receiving the identifier from the targeted individual, the second media including an audio message having at least one generic portion and at least one tailored portion, the at least one tailored portion configured based on the data related to the targeted individual.” Similar to claim 1, the method of claim 21

provides a tailored advertisement to each targeted individual, the tailored advertisement including at least one tailored audio component.

For at least these reasons, Applicant submits that the marketing method as recited in independent claim 21 is patentable over Marsh. Further, Applicant submits that claims 22-26 which depend from claim 21 are in condition for allowance at least for the reasons given above in connection with claim 21 and for the further limitations of claims 22-26.

Applicant submits that Marsh does not disclose, teach or suggest the marketing system for communicating with a targeted individual as recited in claim 27 comprising, “the processor adapted to present the targeted individual with a media, the media including a visual component and an audio component, the audio component having at least one generic portion . . . and at least one tailored portion . . .” Similar to claim 1, the system of claim 27 provides a tailored advertisement to each targeted individual, the tailored advertisement including at least one tailored audio component.

For at least these reasons, Applicant submits that the marketing system as recited in independent claim 27 is patentable over Marsh. Further, Applicant submits that claims 28-31 which depend from claim 27 are in condition for allowance at least for the reasons given above in connection with claim 27 and for the further limitations of claims 28-31.

Applicant submits that Marsh does not disclose, teach or suggest the marketing system for communicating with a targeted individual as recited in claim 32 comprising, “the processor adapted to present the first targeted individual with a media configured for the first targeted individual, the media including an audio component, the audio component having an at least one generic portion . . . and an at least one tailored portion, . . . ; the processor further adapted to present the second targeted individual with a media configured for the second targeted individual, the media including an audio component, the audio component having an at least one generic portion . . . and an at least one tailored portion . . .” Similar to claim 1, the system of claim 32 provides a tailored advertisement to each targeted individual, each tailored advertisement including at least one tailored audio component.

For at least these reasons, Applicant submits that the marketing system as recited in independent claim 32 is patentable over Marsh. Further, Applicant submits that claims 33-35 which depend from claim 32 are in condition for allowance at least for the reasons given above in connection with claim 32 and for the further limitations of claims 33-35.

Applicant submits that Marsh does not disclose, teach or suggest the method for marketing to a targeted individual as recited in claim 36 comprising the step of, “providing the targeted individual with a resource . . . , the resource including a visual component and an

audio message having at least one generic portion . . . and at least one tailored portion, . . .”  
Similar to claim 1, the method of claim 36 provides a tailored advertisement to each targeted individual, the tailored advertisement including at least one tailored audio component.

For at least these reasons, Applicant submits that the marketing method as recited in independent claim 36 is patentable over Marsh. Further, Applicant submits that claims 37 and 38 which depend from claim 36 are in condition for allowance at least for the reasons given above in connection with claim 36 and for the further limitations of claims 37 and 38.

**Final Remarks**

Claims 1-38 are believed to be in condition for allowance. Such allowance is respectfully requested.

If necessary, please consider this a Petition for Extension of Time to affect a timely response. Please charge any additional fees or credits to the account of Bose McKinney & Evans, LLP Deposit Account No. 02-3223. In the event that there are any questions related to these amendments or to the application in general, the undersigned would appreciate the opportunity to address those questions directly in a telephone interview to expedite the prosecution of this application for all concerned.

Respectfully submitted,  
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